

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-213148

DATE: February 14, 1984

MATTER OF: Baker-Roberts, Inc.

DIGEST:

Agency properly rejected a bid bond that designated one firm as the intended corporate surety but was submitted with a power of attorney from a different corporate surety where the surety designated on the bond was not on the Treasury Department's list of acceptable sureties, and there was insufficient evidence on the face of the bond and accompanying documents to conclude with certainty that the other surety would be bound.

Baker-Roberts, Inc. protests the rejection of its bid under invitation for bids No. R6-83-180C issued by Region 6 of the Forest Service, U.S. Department of Agriculture. Baker contends that the agency improperly determined that its bid bond was defective. We deny the protest.

The solicitation was issued on August 18, 1983 and sought bids for the construction of a boat ramp and parking area at Lake Kachess, Wenatchee National Forest. At the September 12 bid opening, Baker submitted the apparent low bid. The agency determined, however, that Baker's bid was nonresponsive because the surety listed on Baker's bid bond was not one of those listed in Treasury Department Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."

Both the section of the bond reserved for designation of the surety and the section to be filled out and signed by the corporate surety listed the Hartford Insurance Company as the surety. The execution section was signed by Fred Jerome as attorney-in-fact. Attached to the bond was a power of attorney issued by the Hartford Accident and Indemnity Company--a Connecticut corporation--appointing

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Fred Jerome, among others, as its agent "to sign, execute and acknowledge any and all bonds. . . ."

Baker submitted a protest to the agency, after the agency informed Baker of its determination to reject the bond. Baker contended that the designation of Hartford Insurance was the result of a clerical error and that in fact Hartford Accident and Indemnity would act as the surety. The agency then informed Baker that rejection of its bond was still necessary because in its opinion Hartford Accident and Indemnity could not be bound by the bond.

Baker reiterates its contention regarding its intended surety in its protest to our Office. It also argues that if the only reason for the rejection of its bond was the agency's concern whether the surety would be bound, the agency should have accepted the agent's offer to "forward an amended bid bond which would bind the surety."

It is well-settled that a bid bond is a material part of the bid and therefore must be furnished with the bid. 38 Comp. Gen. 532, 536 (1959); Baucom Janitorial Service, Inc., B-206353, April 19, 1982, 82-1 CPD 356. To view the bid bond requirement otherwise, so as to permit waiver of a bid bond requirement or of failure to furnish a proper bid bond, would make it possible for a bidder to decide after opening whether or not to have its bid rejected, cause undue delay in effecting procurements, and create, through the subjective determinations by different contracting officers of whether waiver is appropriate, inconsistencies in the treatment of bidders. See Edw. Kocharian & Company, Inc.--request for modification, 58 Comp. Gen. 516, 518 (1979), 79-1 CPD 326. Therefore, where a bidder supplies a defective bond, the bid itself is rendered defective and must be rejected as nonresponsive. Atlas Contractors, Inc., B-209446, March 24, 1983, 83-1 CPD 303, reversed on other grounds Sub Nom Hancon Associates--Request for Reconsideration, B-209446.2, April 29, 1983, 83-1 CPD 460. The determinative question is whether the bidding documents establish that the bond could be enforced if the bidder did not execute the contract. A.D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD 194.

We believe that the agency acted properly in rejecting Baker's bond. The bond on its face lists Hartford Insurance as the intended surety. This company, however, is not listed on Circular 570. We have consistently held that a bid guarantee furnished by a surety that is not on the Treasury Department's list is inadequate and renders the bid nonresponsive. Zemark International Construction Co., B-203020, May 12, 1981, 81-1 CPD 372; Ron Grove's Heating, Air Conditioning, and Piping, Inc., B-198687, May 23, 1980, 80-1 CPD 360. Although a Hartford Accident and Indemnity power of attorney was attached to the bond, and one of the persons designated as an agent on that power of attorney signed the bond, we cannot conclude that this fact would result in that company's being bound under the bond, in the absence of any other evidence on the face of the bond which shows that Hartford Accident and Indemnity intended to act as surety on the bond and since the bond itself identified a different firm as the surety. Compare Hancon Associates--Reconsideration, supra, where we concluded that the seal on the bond and the accompanying power of attorney of one of two surety companies identified on the bond established which company was the intended surety. In short, under the circumstances here, we cannot conclude with certainty that Hartford Accident and Indemnity would not be able to disclaim liability on the bond. See Truesdale Construction Co., Inc., B-213094, November 18, 1983, 83-2 CPD 591. Therefore, we find the basis for protest to be without merit.

Baker also makes other contentions regarding what it characterizes as examples of the arbitrary and capricious manner in which the agency treated its bid and its protest. We have considered each of these contentions in light of the facts presented in the record. We do not believe that any of these alleged improprieties provide a basis for sustaining the protest.

The protest is denied.

Milton J. Fowler
for Comptroller General
of the United States